

STATE OF MINNESOTA
IN COURT OF APPEALS

In Re: Guardianship of
Sharon Kowalski, Ward

STATEMENT OF THE CASE
OF APPELLANT
SHARON KOWALSKI

PROBATE COURT CASE
NUMBER: 4497

APPELLATE COURT CASE
NUMBER: C1-85-1502

Appellant Sharon Kowalski, Ward submits this Statement of the Case in conjunction with her appeal from the Order filed July 23, 1985 denying Karen Thompson's motion to remove Donald Kowalski as guardian of Sharon Kowalski and appointing Donald Kowalski guardian of the person of Sharon Kowalski with all of the powers enumerated in Minn. Stat. § 525.56, Subd. 3 and 4, which appointment is not the alternative least restrictive of Sharon Kowalski's civil rights and liberties.

1. Court of case origination and name of judge who presided.

Sherburne County District Court -
Probate Division, Tenth
Judicial District
Judge Bruce R. Douglas

2. Jurisdictional statement.

Appeal is from the Order filed July 23, 1985.

3. Type of litigation.

Probate proceedings involving guardianship and conservatorship of the person and estate of an adult.

4. Brief description of claims, defenses, issues litigated and result below.

Sharon Kowalski, born August 8, 1956, was seriously injured in an automobile accident on November 13, 1983. As a result of the accident, Ms. Kowalski's physical and mental abilities are limited and she resides in a nursing home. Ms. Kowalski, however, is able to make her wishes known regarding basic decisions such as her visitor preferences. Ms. Kowalski communicates by various means such as typing responses on an electric typewriter, using hand signals and pointing to written words.

Since the accident, Ms. Kowalski has been the subject of a heated legal battle concerning the terms of her guardianship, residency, treatment and accessibility to visitors. The parties to that dispute are Ms. Kowalski's parents, Donald and Della Kowalski, and her friend and housemate of four years, Karen Thompson. The legal dispute began when the parties filed cross petitions to be appointed Ms. Kowalski's guardian. In a thoughtful and sensitive Order, a copy of which is attached hereto as Exhibit A, the probate court made the following finding of fact:

The Court recognizes that Karen Thompson and Donald and Della Kowalski each have a significant relationship with the Ward, Sharon Kowalski, and finds each to be a suitable and qualified person to discharge the trust. However, in light of the difficulties existing between them the court is unwilling to appoint joint guardians. Therefore, the Petitioner, Karen Thompson, agrees to the appointment of Donald Kowalski as guardian with no recognition that he is the most suitable and best qualified among those available and

willing to discharge the trust, but is willing to accept the Court's appointment of Donald Kowalski under certain conditions and restrictions in order to avoid a contested hearing in the matter, which might not be in Sharon's best interest and in order to make every effort to resolve the difficulties existing between them.

Order dated April 25, 1984, Finding of Fact No. 11.

The original Order contained several significant limitations and restrictions on Mr. Kowalski's power.

Ms. Thompson and the Kowalskis were to have equal access to Ms. Kowalski and to medical and financial information regarding Ms. Kowalski. Id. ¶ 1(a)-(e). Thus, although characterized by the probate court as Ms. Kowalski's guardian, Mr. Kowalski was in fact her conservator due to the restrictions placed on his power. See Minn. Stat. § 525.539.

Despite the probate court's recommendation to the parties that they attempt to resolve the conflict between them, the Kowalskis and Ms. Thompson continued to battle. Mr. Kowalski brought numerous motions to restrict Ms. Thompson's involvement in Ms. Kowalski's care and to terminate any contact between Ms. Thompson and Ms. Kowalski. In response to these motions, Ms. Thompson sought to remove Mr. Kowalski as guardian and to substitute in his place either herself or a neutral party. These various motions were, for the most part, denied and the original Order remained in place.

The Order which is the subject of this appeal resulted from the same scenario: Mr. Kowalski moved to terminate any visitation or contact between Ms. Thompson and Ms. Kowalski, and,

in response, Ms. Thompson moved to have Mr. Kowalski removed as guardian. In support of his motion, Mr. Kowalski contended that Ms. Thompson's visits were somehow harmful to Ms. Kowalski. In support of her motion, Ms. Thompson argued that Mr. Kowalski was unable to act in Ms. Kowalski's best interests.

Throughout these protracted proceedings, two facts remain clear: (1) Sharon Kowalski has the capacity both to decide and to communicate her decisions regarding her visitor preferences; and (2) Sharon Kowalski wishes to have Karen Thompson visit her. The Order issued in response to the latest round of motions ignores these two facts. The Order does not find that Ms. Thompson's visits are harmful to Ms. Kowalski, does not grant or deny Mr. Kowalski's motion to terminate all contact between Ms. Thompson and Ms. Kowalski, and does not rescind or modify the court's earlier factual finding that Ms. Thompson has a significant relationship with Ms. Kowalski. Instead, the Order gives Mr. Kowalski the full powers of a guardian, including the power to determine who may visit Ms. Kowalski. Thus, in violation of Minn. Stat. § 525.56, Subd. 2, the Order is not the alternative least restrictive of Ms. Kowalski's civil rights and liberties; it ignores not only her capacity to make certain decisions but her expressed wishes.

As previously noted, the Order at issue was filed on July 23, 1985. On July 25, 1985, Mr. Kowalski terminated all contact between Ms. Thompson and Ms. Kowalski. On the morning of July 26, 1985, Ms. Kowalski's attorneys from the Minnesota Civil

Liberties Union were notified by the nursing home that they no longer had permission to visit Ms. Kowalski. That afternoon, Mr. Kowalski moved Ms. Kowalski from the court-ordered nursing home in Duluth, Minnesota to a nursing home in Hibbing, Minnesota. The new nursing home advises individuals interested in visiting Ms. Kowalski that they must contact the guardian, Donald Kowalski, and that his telephone number can be obtained from the telephone directory. Mr. Kowalski has disconnected his listed telephone number and now has an unpublished number.

5. Issues proposed to be raised on appeal.

A. Whether the probate court abused its discretion by failing to order the alternative least restrictive of Sharon Kowalski's civil rights and liberties in its appointment of a guardian of the person of Sharon Kowalski with all of the powers set forth in Minn. Stat. § 525.56, Subd. 3 and 4.

B. Whether the probate court abused its discretion in failing to remove Donald Kowalski as guardian of the person of Sharon Kowalski.

C. Whether the probate court abused its discretion in appointing Donald Kowalski as guardian of the person of Sharon Kowalski.

6. Is transcript required? Yes. If so, full or partial transcript? Partial.

7. Is oral argument requested? Yes. If so, is argument requested at a location other than that provided in Rule 134.09, Subd. 2? No.

8. Are formal briefs necessary?

Yes. Trial memoranda, supplemented by a short letter argument will not be sufficient.

9. Names, addresses, zip code, and telephone numbers of attorneys for all interested parties.

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